

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN JEFF PATTISON**, on January 15, 2003 at
8 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Jeff Pattison, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Edward Butcher (R)
Rep. John Musgrove (D)
Sen. Linda Nelson (D)
Rep. Rick Ripley (R)
Sen. Debbie Shea (D)

Members Excused: None.

Members Absent: None.

Staff Present: Kelly Gorin, OBPP
Gary Hamel, Legislative Branch
Elaine Olsen, Committee Secretary
Doug Schmitz, OBPP

Please Note: Audio-only Committees: These are summary minutes.
Testimony and discussion are paraphrased and condensed. The tape
time stamp refers to the material which follows.

Committee Business Summary:

Hearing & Date Posted: Department of Natural Resources,
1/15/2003
Executive Action: None

{Tape: 1; Side: A; Approx. Time Counter: 1 - 8}

Jack Stoltz, Administrator, Water Resources Division (WRD), Department of Natural Resources and Conservation (DNRC), gave an overview of the Division. Montana is a headwater state, and the Montana Constitution recognizes that all the water of the State is the property of the State for the use of its people. The WRD deals with quantity, and the Department of Environmental Quality (DEQ) deals with quality. Dealing with quantity is a management issue, while DEQ has regulatory authority in dealing with water quality.

Jack Stoltz stated that the WRD is broken into four bureaus which interact. Eight regional offices are located in Bozeman, Billings, Glasgow, Havre, Helena, Kalispell, Lewistown and Missoula. Middle management has been eliminated, and the Regions are operated at the service level. The number of Division FTE has decreased from 125 in 1990 to 110 today.

{Tape: 1; Side: A; Approx. Time Counter: 8 - 20}

Jack Stoltz described the State Water Projects Bureau which is responsible for the operation, management, maintenance and rehabilitation of state-owned dams and reservoirs across the state. The Division contracts with 22 different water users associations across the state and delivers water to them for irrigation, stock watering, some municipal uses, and fish and wildlife uses. Project rehabilitation is the number one priority because the dams and reservoirs were built in the 1930's.

Jack Stoltz stated the transfer of the ownership of the properties is the second priority of the Bureau. The Division manages the water rights attached to those properties. The Broadwater hydro power project at Toston Dam is managed by the WRD with the revenues going into the rehabilitation project.

Jack Stoltz stated that since 1994, 23 projects have been transferred to private ownership with 11 more targeted for transfer. **Jack Stoltz** stated, "It is the Division's perspective that there is absolutely no reason for the State of Montana to own anything unless it has a significant public attachment to it."

Jack Stoltz gave an overview of rehabilitation projects providing details on Nevada Creek Dam and the dam on the North fork of the Smith River.

{Tape: 1; Side: A; Approx. Time Counter: 21 - 31}

Jack Stoltz stated the Water Right Bureau's primary mission is to protect the existing water rights for the State of Montana. Sixteen and one-half FTE are located in Helena and are involved in support functions such as record keeping and notices. There is staff in the regions as well. The Centralized Records System is mandated by the State Constitution. Under rules adopted by the Montana Supreme Court, prior to the claim being decreed, the Department examines water right claims filed by the water users with the Montana Water Court. The WRD continues to work with the Water Court and the water users during the objection process.

Jack Stoltz explained that the WRD is involved in water-use authorizations, a permitting process for new appropriations of water or changes of existing uses, in order to avoid adverse effects to the existing water users. The Division also establishes control groundwater areas and basin closures. The general adjudication is state-wide and involves 285,000 claims and about 85,000 claimants. Working with the Water Court, the Division is starting to enforce the court decrees in some basins.

Jack Stoltz stated the Centralized Record System contains over 350,000 historic water rights and permits. The original documents are bar coded which has been an award winning innovation in record-keeping. The micro film process needs to be updated. The new Oracle electronic database is designed for the Montana water rights and is online. DNRC serves as a data resource agency for a lot of different interest groups, and online data saved the Department time and makes the information more accessible.

Jack Stoltz stated the Water Management Bureau deals with federal policy such as Endangered Species Act and the Clean Water Act, using a localized empowerment program that has local groups dealing with local water management issues. The Bureau deals with drought response, hydro sciences, interstate and international issues and other subjects. Montana's approach to handling these issues has been tremendously successful.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 9}

Jack Stoltz said that the hydro sciences area provides technical data and ongoing mapping of controlled water areas. DNRC was the first agency to get involved with the coal bed methane issue collaboratively with the industry, local citizens and the Board of Oil and Gas.

Jack Stoltz stated that the Governor's Drought Advisory Committee is staffed by the WRD. The Division has provided instruction to other states, and the process is being modeled for the National Drought Act.

Jack Stoltz stated the Water Operations Bureau deals with some regulatory responsibilities including dam safety, flood plain management, assistance to flood plains managers on the county level, water measurement and other projects. The Board of Water Well Contractors and water well drilling and contracting licensing is administratively attached to the Water Operation Bureau.

Jack Stoltz stated the dam safety program is in the Water Operation Bureau. This is a federally-mandated responsibility and is a regulatory program. Across Montana there are about 9,000 dams, with a few high hazard dams which means the dam is greater than 50 acre-feet and could cause a loss of life if it were to fail. The 2.3 FTE in this program provide educational opportunities for contractors that build dams and for people who own dams. Standards are established, and resources are made available to help people to maintain their dams.

Jack Stoltz concluded with comments about the Tongue River Dam, which won an award as the number one engineering project in the western United States.

{Tape: 1; Side: B; Approx. Time Counter: 9 - 20}

Discussion:

SEN. TASH asked about high hazard dams at Montana State Prison and why they were not listed as "state owned." **Jack Stoltz** stated the dams shown are owned by DNRC, and that DNRC is also responsible for ten dams owned by the Department of Fish Wildlife and Parks (FWP). The Department works with the Prison on the rehabilitation of their six dams.

SEN. NELSON asked about how the water in Fort Peck Dam fit into the comment that all of the water in the state belongs to the state for the use of the people. **Jack Stoltz** replied that the Montana Constitution can be "trumped by the federal government in a heartbeat." The Corps of Engineers owns and operates Fort Peck, and they operate it within the entire Missouri system. The State has prevailed in one law suit, but the federal government has primacy.

REP. MUSGROVE asked what percentage of the Milk River is used by Alberta. **Jack Stoltz** replied that he was unsure of the amounts. Alberta and Montana enjoy a very good working relationship on the operation of the river.

SEN. TASH commented on the ownership of water dams, and that many of the dams were built for flood control, allowing the Army Corps of Engineers to have a part in how much water can be stored, how much has to be released and that the dam operation has to be coordinated with downstream management. **Jack Stoltz** observed that the dams are built for multiple purposes, and they are not always managed that way. The Corps of Engineers and Bureau of Reclamation have adopted variable flows for the operation of Libby Dam, an idea the Department has been pushing for ten years.

CHAIRMAN PATTISON asked about water rights with the Tribes. **Jack Stoltz** replied that so far the courts have held that states have primacy in water rights. Compacts deal with large water rights and recognize that federal entities have a right to operate within the State of Montana water rights system.

CHAIRMAN PATTISON asked how many water rights in Montana are not being adjudicated. **Jack Stoltz** stated that all water rights in the state are being adjudicated.

SEN. BUTCHER asked if the Corps of Engineers filed water rights within Montana's system, such as on Fort Peck. **Jack Stoltz** stated that was correct, and that the Corps can operate Fort Peck within the system as they are authorized.

SEN. BUTCHER asked if Montana is going into the wrong federal court with its water issues when it's dealing with outfits like the Corps. **Jack Stoltz** stated that Montana has to look at all options.

CHAIRMAN PATTISON inquired about the priority list for dam rehabilitation, asking how the necessary work is ranked. **Jack Stoltz** replied that it was a case-by-case engineering analysis. Testing can establish the highest level of risk with seepage being one of the highest issues of concern. The need for repair and the downstream liability are considered. Dams and reservoirs are on an annual inspection schedule which includes an engineering analysis.

{Tape: 1; Side: B; Approx. Time Counter: 20 - 30}

Bud Clinch, Director, DNRC, clarified that the dams being addressed are state-owned projects. Analysis and evaluation for

maintenance and repair of private projects is done by a different bureau, and the funding is being addressed in a different part of the funding process.

REP. RIPLEY asked if the downstream flow required consideration for the endangered species. **Jack Stoltz** replied that the Department considers the structure prioritizing projects. Environmental mitigation are components of the rehabilitation project.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 13}

Jack Stoltz stated that DP10 demonstrates a significant decrease in operating expenses with the decrease primarily attributable to the Division's moving into a state-owned facility.

DP7025 proposes to reduce the vehicle fleet by four vehicles. DP13 addresses dam rehabilitation and includes five proposals including phase two of Nevada Creek Dam, Niland Reservoir, North fork of the Smith, Tongue River Dam and Broadwater Hydro Power. Funding sources include the Division's water storage budget, RIT funds, federal funds and hydro power sales.

SEN. BUTCHER asked if the contractor on the Tongue River project had any liability for the repair of the gate. **Director Clinch** stated that DNRC has reconciled all the issues.

{Tape: 2; Side: B; Approx. Time Counter: 13 - 27}

REP. BUTCHER asked if the five projects in this DP were prioritized. **Jack Stoltz** replied that availability of funds changes. **Ann Bauchman, DNRC**, stated that the water storage analysis does show a negative balance. That takes into consideration long-term assets for water purchase contracts that come in over 10 to 15 years and long-term liabilities for a loan outstanding for the same period of time. A working capital model of exact revenues that are due in on the loans and payments shows the available funds.

SEN. SHEA inquired if the Department has a maintenance schedule for the dams. **Jack Stoltz** replied the projects are part of the long-term rehabilitation program. **Director Clinch** added that if the balance of the funding accounts including the RIT is less than the amount appropriated, projects will not be overspent, rather they will be prioritized to the best of the ability of the Department.

Jack Stoltz reported that DP20 addressed additional habitat restoration needed downstream from the Broadwater hydro power facility to meet the requirements of FERC.

Jack Stoltz introduced new proposals, starting with DP19, a request to continue with a water rights verification program. The request is for an addition of four FTE to complete the verification. One-time-only(OTO) funding was authorized for the last biennium, but the project is not yet completed.

EXHIBIT(jnh08a01)

{Tape: 2; Side: A; Approx. Time Counter: 27 - 30}

Director Clinch clarified that the funding source is State Special Revenue with the fees being paid by people who applied for new water rights or for changes.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 16}

Jack Stoltz discussed DP7002 which would have water rights applicants pay for the public notice required during the permitting procedure. DP7020 is a proposal to eliminate a senior engineering position, a reduction of one FTE.

Jack Stoltz addressed a group of language appropriations beginning with a \$1 million request for a reserve to purchase replacement equipment at Broadwater Dam should the need arise. The second language appropriation would allow the Broadwater Water Users to spend a portion of the interest revenue from the generating facility designated for their use in maintaining their canals and such. The final language appropriation is for \$500,000 of hydro power earnings which is available for repairing, rebuilding or improving state water projects. These funds allow for emergency response.

{Tape: 2; Side: B; Approx. Time Counter: 16 - 19}

CHAIRMAN PATTISON asked for clarification on language appropriations and the regular budget expenditures. **Doug Schmitz, OBPP**, said that state special revenues cannot be budgeted into the base by the OBPP. If an emergency arose, a budget amendment from State Special Revenues could not be established. **Gary Hamel** commented that the "contingency" that would have to occur before the Department could use the funds had not been clarified.

{Tape: 2; Side: B; Approx. Time Counter: 19 - 22}

Director Clinch stated he had allocated a share in the reduction in General Fund to each Division. Those reductions would have an impact on services; programs and FTE were eliminated. Vacancies at the Department are the highest they have been in ten years. With the Legislative global action, the Department is facing an additional \$5.4 million in cuts over the biennium. The Water Resources Division has already reduced their budget by \$606,000 in General Fund. The next two decision packages are an additional reduction of \$707,000 in Water Resources.

{Tape: 2; Side: B; Approx. Time Counter: 22 - 30}

Jack Stoltz introduced a proposal to replace the existing funding for water rights services with fee revenues. Funding would increase from 12.3 percent fees to 100 percent funding by fees. The fee would be \$50 for a small well and \$400 for a larger project such as a center pivot, a golf course or a sub development.

REP. MUSGROVE asked if people would pay a fee to drill the well even though in some cases they do not have a permit to use the well. **Jack Stoltz** replied that in some cases people drill a monitoring well but then do not go forward because it is shown the well will have a negative impact.

SEN. BUTCHER asked for the fee schedule on stock reservoirs. **Jack Stoltz** replied that stock reservoirs are exempted. A small appropriation is \$25. A stock water reservoir on a perennial surface source would increase to \$400.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 4}

Jack Stoltz said the additional reduction would eliminate water rights verification project, which includes four FTE, which would result in \$160,000 in the first year and \$168,000 being redirected to the general fund.

{Tape: 3; Side: A; Approx. Time Counter: 4 - 16}

Susan Cottingham, Program Manager, Reserved Water Rights Compact Commission (RWRCC), gave an overview of the Department's effort to negotiate water settlements for the State with entities including the seven Indian reservations, national parks, and Forest Service lands. Originally the RWRCC was to sunset in 1982 and currently the sunset date is 2005 with a request before the legislature to sunset in 2009. All compacts have to be approved

by the Legislature and are directed toward settling water rights without litigation.

EXHIBIT (jnh08a02)

{Tape: 3; Side: A; Approx. Time Counter: 16 - 30}

SEN. NELSON asked for additional information of statements by the Salish Kootenai tribes. **Susan Cottingham** replied that the Tribes had stated that they "owned" all the water on the Reservation, and that they would administer all the water rights on the Reservation including non-Indian water rights.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 7}

A mediator may be needed before discussion can go forward.

CHAIRMAN PATTISON inquired where the RWRCC felt they could have the most influence, especially considering that the Flathead issue appears to be at a standstill. **Susan Cottingham** replied that currently the staff is working on six projects but they don't want to walk away from the negotiation on the Flathead.

{Tape: 3; Side: B; Approx. Time Counter: 7 - 21}

SEN. TASH asked about the costs of litigation. **Susan Cottingham** stated that Wyoming litigation costs since the 1970's are currently over \$6 million.

REP. RIPLEY asked about negotiations in the Flathead. **Susan Cottingham** said negotiations are continuing but are difficult.

REP. RIPLEY asked if the finances would not be better spent elsewhere. **Susan Cottingham** said the constituents in the area want the permitting procedure to be allowed.

{Tape: 3; Side: B; Approx. Time Counter: 22 - 26}

Chris Tweeten, Chairman, RWRCC, made the comment that the Commission operates on information. The RWRCC has asked that the sunset date be extended to 2009. **Chris Tweeten** asked the Committee to look carefully at any budget cuts that would limit the staff's ability to complete the process.

SEN. TASH commented that in litigation the state pays the costs for the Tribes indirectly through the federal government. **Chris Tweeten** added that individual water users would have to pay litigation defense costs also.

{Tape: 3; Side: B; Approx. Time Counter: 26 - 30}

Susan Cottingham presented DP6, which includes operating costs which includes the per diem and salary for the Commission members and rent increase. The Compact's budget would be decreased by \$38,000 by reduction of one FTE.

{Tape: 4; Side: A; Approx. Time Counter: 1 - 6}

Tom Schultz, Division Administrator, Trust Lands Management Division, stated the Division manages 5.2 million surface acres and 6.3 million subsurface acres of School Trust Lands. The lands are managed for grazing, agriculture, timber, coal and minerals. The Division has no regulatory authority. Over \$33 million in revenue is generated for education in Montana. For every \$1.00 spent in FY02, \$5.25 was generated. The asset value is \$4.1 billion.

Mr. Schultz stated the Division includes 125 FTE, including foresters, land specialists, hydrologists, engineers, economists, planners, and accountants.

{Tape: 4; Side: A; Approx. Time Counter: 6 - 14}

Director Clinch added that the Permanent Fund, set by the State Constitution, states that the revenue from renewable resources is distributed each year. Revenues from something of a permanent disposition such as a sale of land or an easement or coal or gas must go into a permanent fund. The interest is distributed annually. The fund is currently at an excess of \$300 million and is managed by the Board of Investments.

REP. RIPLEY asked about a proposed bill that might affect the permanent trust. **Tom Schultz** responded that the bill addresses land banking which would allow for sale of lands with the money going into a separate component of the Permanent Fund. The money could be held for up to ten years to be used to purchase lands that are more accessible or are more profitable.

{Tape: 4; Side: A; Approx. Time Counter: 14 - 26}

Tom Schultz addressed DP7 and DP27 have been withdrawn. The Division has eliminated one FTE that deals with other agency lands.

SEN. TASH asked about special use management and whether or not it entailed stream management. **Tom Schultz** replied that the State of Montana owns the river beds and banks. The hydrologists

in the Mineral Bureau works with determining of ownership, quit claims deeds, and quiet title actions. Sometimes litigation is involved. **Director Clinch** added that mineral ownership lies beneath the beds and banks and that the State is entitled to a share of the royalties from adjacent mining or drilling that may be producing from that pool.

CHAIRMAN PATTISON asked about the Swan Valley Boot Camp. **Tom Schultz** responded currently the facility is leased for rehabilitation of troubled teens. **Director Clinch** explained that the Boot Camp facility has been terminated, and all the improvements reverted to DNRC. Through the RFP process, the facilities are being leased.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JEFF PATTISON, Chairman

ELAINE G. OLSEN, Secretary

JP/EGO

EXHIBIT (jnh08aad)